IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

MONDAY, THE 20TH NOVEMBER 2006 / 29TH KARTHIKA 1928

Crl.MC.No. 2432 of 2005(D)

AGAINST THE ORDER DATED 04/06/2005 IN CMP 3316/05 IN CC.377/2001 of JUDL. MAGISTRATE OF FIRST CLASS COURT, KATTAKADA

.....

PETITIONER: PETITIONER/ACCUSED

JAYARAJ S/O. SATHYNASAN,
ARUN NIVAS, PALOTTUVILA, MALAYINKEEZHU,
NEYYATTINKARA.

BY ADV. SRI.D.KISHORE

RESPONDENTS: COUNTER PETITIONER/COMPLAINANT & STATE

1. MANIYAN S/O. SANKARAN NADAR
   MANI MANDIRAM, MINI ESTATE ROAD, MEPPUKKADA,
   MALAYINKEEZHU, THIRUVANANTHAPURAM.

2. STATE OF KERALA REPRESENTED BY ITS
   PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
   ERNAKULAM.

BY ADV. SRI. GIKKU JACOB, PUBLIC PROSECUTOR

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 20/11/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.R. UDAYABHANU, J.

CRL.M.C.NO.2432 of 2005

DATED THIS THE 20TH DAY OF NOVEMBER 2006

ORDER

The petitioner, who is the accused in C.C.No.377/2001 and in S.T.No.608/2003 in the file of the Judicial First Class Magistrate court, Kattakkada with respect to the offence under Section 138 of the Negotiable Instruments Act, has sought for joint trial of both the cases. It is the case of the petitioner that two blank cheques were handed over to the de facto complainant at the time when he borrowed a sum of Rs.15,000/-. According to the petitioner, this will be evident from the fact that the cheque numbers issued are 108217 and 108218 in S.T.No.608/2003 and C.C.No.377/2001 respectively. According to the petitioner, he had repaid the amount borrowed but subsequently the complainant has filled up the cheques putting different amounts and different dates. Both the cases were pending before the different courts and he had applied before the Sessions Judge under Section 208 Cr.P.C. and the case pending before the Judicial First Class Magistrate Court-III,

Thiruvananthapuram was transferred to the Judicial First Class Magistrate Court, Kattakkada wherein C.C.No.377/2001 is pending.

2. The respondent, R1, although served notice did not enter appearance.

3. I find that the allegations in C.C.No.377/2001 is that the petitioner /accused borrowed a sum of Rs.52,000/- and when the same amount was sought to be repaid, he issued cheque No.108218 on 29-5-2000 and thereafter when the cheque was presented the same got dishonoured for want of funds in the account of the accused and registered notice demanding payment was sent on 9-8-2000. In S.T.No.608/2003 the allegation is that a sum of Rs.15,000/- was borrowed and towards discharge of the above liability, cheque No.108217 was issued on 20-12-2002. The same when presented got dishonoured for want of funds in the account of the accused on 8-5-2003 and lawyer notice sent demanding payment on 23-5-2003. Hence, as per the prosecution allegations the borrowal and the issuance of the cheques are on different dates, one is in 2000 and the other in the year 2002. Hence, according to the complainant, the acts are

not part of the same transaction. It is only according to the petitioner/accused, the alleged acts are part of the same transaction.

In the circumstances, I find that joint trial as prayed for cannot be allowed. All the same, the court below is directed to try both the cases, i.e.S.T.pending before the Judicial First Class Magistrate Court,Kattakkada simultaneously by separate trials and are to be disposed of by judgments to be pronounced on the same day. The Crl.M.C.is disposed of accordingly.

K.R.UDAYABHANU, JUDGE

ks.